

# **TIGARD WATER DISTRICT BOARD OF COMMISSIONERS**

Serving the Unincorporated Area

**Tigard Public Works – Annex  
9020 SW Burnham Road, Tigard**

**Monday, May 14, 2007  
7:00 p.m.**

**Members Present:** Beverly Froude, George Rhine, Janet Zeider, and Charles Radley  
**Members Absent:** None  
**Staff Present:** Brian Rager, Roger Dawes, Greer Gaston, and Joy Koss  
**Visitors:** Virginia Babcock, Clark Balfour, Ken Henschel, Julie Russell,  
and Wynne Wakkila

## **1. Call to Order, Roll Call and Introductions**

The Tigard Water District (TWD) meeting was called to order by Chair Froude at 7:25 p.m. All board members were in attendance.

## **2. Approval of Minutes – April 23, 2007**

The minutes of the April 23, 2007 meeting were unanimously approved by the board.

## **3. Visitors Comments - None**

## **4. Discussion of Responses to Questions with Attorney Balfour**

Mr. Balfour began with some history. About one year ago similar questions came up regarding the Canterbury property and the Intergovernmental Agreement (“IGA” or “Agreement”) that was signed back in 1993. In his letter of April 21, 2006, Mr. Balfour stated the Agreement was not clear and should be rewritten. The Agreement covers a 25 year period and there are 10-11 years left. Mr. Balfour thought the District and the cities need to anticipate these kinds of questions and update the Agreement.

With regard to the Canterbury issue and the question as to the validity of the IWB representatives’ vote at the April 11, 2007, IWB meeting, the TWD board is in a position of doing one of three things:

- Make a motion to ratify the vote of the IWB representative to remove all doubt.
- Indicate to the other members of the IWB that the TWD may be interested in going forward with a property transaction as discussed, but only if the Agreement is amended or if there is a separate agreement that deals with this specific transaction as far as how the proceeds will be distributed and, in general, how the transaction will be handled.
- Indicate to the IWB that the TWD wishes to decline the transaction.

If the TWD board takes the third option, other IWB members will need to decide whether they want to oppose the TWD's decision. Mr. Balfour looked at the third alternative and what a court would do in his letter of April 26, 2006, and his letter of May 11, 2007. Mr. Balfour concluded it is probable a court would affirm the actions of the IWB.

Mr. Balfour gave a brief history of the TWD and the process the cities of Tigard, Durham and King City went through in 1993 to withdraw from the TWD. The group at that time had a choice as to whether or not to segregate the water system assets by the boundary of each city, or to keep an integrated system. The cities and the remnant district (current TWD) voted to keep an integrated system. A report by Economic and Engineering Services, Inc. (EES) was produced that defined the types of assets in the integrated system. The report refers to both "system" assets and "other" assets.

Mr. Balfour referred to his April 21, 2006, summary conclusions. He said if a court was looking at this, it would likely find the Intergovernmental Water Board could determine if a system asset continues to be necessary for the delivery of water. If not, it could classify it as an "other" asset by unanimous vote of the board. If the vote is not unanimous, then it would remain a "system" asset. The question is: Is the Canterbury site a system asset or not?

Mr. Balfour also concluded a unanimous vote on that kind of reclassification appears to give veto power to any of the IWB members. However, a veto would have to be based on some reasonable analysis that the asset is necessary for system operations. If a member did not have such an analysis to establish the reasonable basis of the veto, a judge could say the party is unreasonably withholding their consent.

Murray, Smith and Associates, an engineering firm, concluded a portion of the Canterbury property was necessary for water system improvements, but another portion was not. Mr. Balfour said it was his opinion a judge would be persuaded that consensus was reached at the January 22, 2007, TWD meeting concerning the disposition of the surplus Canterbury property, and the TWD's representative to the IWB was justified in his vote. With reference to tracking proceeds from a transaction, it is not entirely clear in the Agreement. Mr. Balfour commented that it is his opinion the intent of the Agreement is for the money to remain within the water system and not be distributed to the entities.

Mr. Balfour then summarized portions of his May 11, 2007, letter to the TWD regarding the questions submitted from Julie Russell, Commissioner Radley, Lisa Hamilton-Treick, and Bert Cornick. Some of the questions discussed included:

- Russell, Question 4, regarding the Water Building. Mr. Balfour commented the 1993 EES report, adopted by the Board, placed the headquarters building in the "other", or "non hydraulic" asset category.
- Radley, Question 1, regarding changes to ORS-279 and the effect on property transactions. Mr. Balfour remarked ORS-279 does not apply to local governments with regard to surplus properties.

Mr. Balfour summed up his comments by once again suggesting the three options listed above with regard to the Canterbury transaction. He also suggested again that the TWD recommend

to the other IWB members that the Agreement be revised to better clarify how property and asset transactions should take place.

Mr. Balfour proceeded to address specific questions presented to him.

- Commissioner Radley asked for further clarification with regard to the “surplus” property issue and how ORS-279 may apply. Mr. Balfour suggested all TWD members obtain a copy of the 1993 EES report, as it provides a basis for how assets were defined. The Commissioner offered a copy of the Special Districts Association letter on this issue to Mr. Balfour and asked for his quick review. Mr. Balfour noted that ideally the board should become its own contract review board, but the statute is really only intended for personal property transactions.
- Commissioner Rhine commented, with regard to the IWB discussion to make part of the Canterbury site “surplus property,” that since this property is not necessary for system operation, it would be deemed an “other” asset. As such, it could be argued the property should transfer directly to Tigard. Mr. Balfour replied the Agreement language is not completely clear on this issue, and this is another reason why the Agreement should be amended. He did conclude that ultimately the asset would become an asset of Tigard’s.
- Wynne Wakkila, citizen, asked if a special fund should be set up to allow Tigard to lease part of the Water Building for non-water purposes. Commissioner Rhine indicated the IWB is currently reviewing a proposed lease structure that would accomplish this, and proceeds from the lease would go into the Water Fund to be used throughout the entire water service area.

Commissioner Rhine motioned to have the TWD board ratify the actions taken by the TWD’s representative at the April 11, 2007, IWB meeting. Chair Froude seconded the motion. Commissioner Radley voiced opposition and advocated for the second option presented by Mr. Balfour. The board voted 3:1 in favor of the motion; Commissioner Radley opposed.

#### **5. Water Supply Update – Brian Rager**

Drilling of the ASR well on the Price property (across from Alberta Ryder School) continues and the depth is now approximately 400 feet. The contractor has been setting the first piece of casing that will cover a depth of the first 300-400 feet. Once the casing is set, the driller will continue the drilling operation. It is estimated the finished depth of the well will be 1,000 feet, similar to ASR 2.

In response to Chair Froude’s inquiry about the site and future improvements, Mr. Rager responded the property is approximately 2.7 acres with a 2,000 square-foot building, a buried three million gallon reservoir, and an above-ground park.

#### **6. IWB Update – George Rhine/Janet Zeider**

Commissioner Rhine, TWD representative on the IWB, stated the April 11, 2007, IWB meeting minutes were changed. The change reflected there was a consensus reached among members, but no vote taken at the January 22, 2007, TWD meeting with regard to the Canterbury proposal.

Commissioner Rhine commented that Tigard attorney, Tim Ramis, provided the IWB with a draft of the First Amendment to the IGA for the rental/lease agreement of the Water Building. This topic will be discussed again at the June 13, 2007, IWB meeting.

## 7. Non-Agenda Items

Next Meeting – Monday, June 25, 2007, 7:00 p.m.

Public Works Annex, 9020 SW Burnham Street, Tigard, Oregon

Commission Radley asked if other board members had an opportunity to look at Oregon law ORS 198.320. Chair Froude indicated that would be an agenda item for the June 25, 2007, meeting.

## 8. Adjournment

Commissioner Rhine motioned to adjourn, Commissioner Zeider seconded the motion, and the board voted unanimously to adjourn the meeting at 8:47 p.m.

  
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Joy Koss, TWD Recording Secretary

Date: June 26, 2007